U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF M-Z-

DATE: OCT. 20, 2016

APPEAL OF TEXAS SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a physician specializing in interventional radiology, seeks classification as a member of the professions holding an advanced degree. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). In addition, the Petitioner seeks a national interest waiver of the job offer requirement that is normally attached to this classification. *See* section 203(b)(2)(B)(i) the Act, 8 U.S.C. § 1153(b)(2)(B)(i). This discretionary waiver allows U.S. Citizenship and Immigration Services (USCIS) to provide an exemption from the requirement of a job offer, and thus a labor certification, when it is in the national interest to do so.

The Director, Texas Service Center, denied the petition. The Director found that the Petitioner qualified for classification as a member of the professions holding an advanced degree, but that he had not established that a waiver of a job offer would be in the national interest. The matter is now before us on appeal. On appeal, the Petitioner contends that he satisfies the national interest waiver requirements.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences arts or business. Because this classification normally requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act states, in pertinent part:

> (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –
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> > (A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will

> substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
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> (B) Waiver of job offer –
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> > (i) National interest waiver. . . . the Attorney General[1] may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Matter of New York State Department of Transportation, 22 I&N Dec. 215, 217-18 (Act. Assoc. Comm'r 1998) (*NYSDOT*), set forth several factors which must be considered when evaluating a request for a national interest waiver. First, a petitioner must demonstrate that he or she seeks employment in an area of substantial intrinsic merit. *Id.* at 217. Next, a petitioner must show that the proposed benefit will be national in scope. *Id.* Finally, the petitioner seeking the waiver must establish that he or she will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. *Id.* at 217-18.

While the national interest waiver hinges on prospective national benefit, a petitioner's assurance that he or she will, in the future, serve the national interest cannot suffice to establish prospective national benefit. *Id.* at 219. Rather, a petitioner must justify projections of future benefit to the national interest by establishing a history of demonstrable achievement with some degree of influence on the field as a whole. *Id.* at 219, n.6.

II. ANALYSIS

The Director determined that the Petitioner qualifies as a member of the professions holding an advanced degree. The sole issue in contention is whether the Petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest. The Petitioner has

[1] Pursuant to section 1517 of the Homeland Security Act of 2002 ("HSA"), Pub. L. No. 107-296, 116 Stat. 2135, 2311 (codified at 6 U.S.C. § 557 (2012)), any reference to the Attorney General in a provision of the Act describing functions that were transferred from the Attorney General or other Department of Justice official to the Department of Homeland Security by the HSA "shall be deemed to refer to the Secretary" of Homeland Security. *See also* 6 U.S.C. § 542 note (2012); 8 U.S.C. § 1551 note (2012).

established that his work as a physician is in an area of substantial intrinsic merit and that the proposed benefits of his radiology research would be national in scope. It remains, then, to determine whether the Petitioner will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications.

At the time of filing the Form I-140, the Petitioner indicated that he was a physician-researcher, specializing in pediatric interventional radiology. He contends that his work has impacted the field of interventional radiology through his "elite clinical" expertise, authorship of publications and "national-level presentations," peer-review work, awards, and the fact that his work has been "read" more than 1900 times online. In support of his eligibility, the Petitioner submitted his résumé , documentation of his published and presented work, peer review activities, research funding, professional memberships, medical training credentials, along with various reference letters discussing his work in the field.

The Petitioner provided evidence that he has authored or co-authored more than 20 articles that have been published in scholarly journals. Although the Petitioner's medical research has value, any research must be original and likely to present some benefit if it is to receive funding and attention from the medical or scientific community. In order for a university, publisher or grantor to accept any research for graduation, publication or funding, the research must offer new and useful information to the pool of knowledge. Not every radiology fellow who performs original research that adds to the general pool of knowledge in the field inherently serves the national interest to an extent that is sufficient to waive the job offer requirement. The Petitioner must establish that once disseminated through publication or presentation, his work has garnered a significant number of independent citations or explain how his findings have otherwise influenced the field as a whole.

Here, the Petitioner asserts that the fact that his work has been "read" more than 1900 times as indicated by an online scholarship website, [redacted] is evidence of the broad dissemination of his work. The fact that the Petitioner's research has been viewed does not necessarily mean that it has impacted the field unless it is accompanied by evidence that the individuals reading the work have then found it impactful and implemented it or used it in some way. The views and downloads do not confirm any ultimate reliance on the Petitioner's findings and do not show that the field's reaction to his articles distinguished him from his peers.

The Petitioner also points to the fact that he is the recipient of the 2015 [redacted] granted by the [redacted] "to recognize and encourage outstanding residents and fellows in radiologic research." The Petitioner does not indicate how many individuals are considered for this award, what percentage of applicants win this award, or explain how the receipt of this award corresponds to impact on the field.

With respect to the documentation reflecting that the Petitioner has presented his findings at radiology meetings and medical conferences, we note that many professional fields regularly hold meetings and conferences to present new work, discuss new findings, and to network with other professionals. Professional associations, educational institutions, healthcare organizations,

employers, and government agencies promote and sponsor these meetings and conferences. Although presentation of the Petitioner's work demonstrates that he shared his original findings with others, there is no documentary evidence showing, for instance, frequent independent citation of his work, the use of his findings by other physicians, or that his findings have otherwise influenced the field of interventional radiology at a level sufficient to waive the job offer requirement.

The Petitioner also submitted letters from colleagues and faculty members at multiple institutions attesting to his expertise and dedication and describing various projects on which he has worked.[2] For instance, section head, pediatric rheumatology, and professor at indicated that the Petitioner "has produced outstanding research in areas which few specialists have expertise thus making him quite unique . . . ." assistant professor, clinical radiology commented that the Petitioner's work regarding trans-jugular liver biopsy in children was the first study to document the procedure for pediatric patients providing a technical success rate of 100%. further stated that the results "provide radiologists across the country with the tools and confidence to perform this very beneficial procedure on pediatric patients." Similarly, program director for the pediatric radiology fellowship at wrote that the Petitioner's research treating distal intestinal obstruction syndrome (DIOS), "has made others in the field cognizant of the efficacy of this procedure in such patients which provides immense benefit," and "since [the Petitioner's] publication numerous radiologists have begun offering this procedure to their patients in the technique described by [the Petitioner]."

program director and associate professor, explains that "[the Petitioner's] experience and exposure to the use of innovative applications of diagnostic and therapeutic tools throughout numerous specialties, makes him an invaluable asset." Furthermore, states that, due to his "excellent experience in teaching," the Petitioner has been assigned to give interventional radiology lectures to residents at

chief of interventional radiology and associate professor, indicated that the Petitioner is an "elite clinician who has routinely produced clinical success stories where others have fallen short." He also mentioned that the Petitioner is a peer reviewer for and the Regarding the Petitioner's services as a peer reviewer, it is common for a publication to ask multiple reviewers to review a manuscript and to offer comments. The publication's editorial staff may accept or reject any reviewer's comments in determining whether to publish or reject submitted papers. Thus, peer review is routine in the field, and there is no evidence demonstrating that the Petitioner's occasional participation in the widespread peer review process is an indication that she will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

[2] While we discuss only a sampling of these letters, we have reviewed and considered each one.

Several of those providing a recommendation for the Petitioner note that his "leading" and "unique" skills are "highly coveted" due to the shortage of pediatric interventional radiologists in the United States. General statements regarding the importance of a given field of endeavor, or the urgency of an issue facing the United States, cannot by themselves establish that an individual benefits the national interest by virtue of engaging in the field. *See NYSDOT*, 22 I&N Dec. at 217. Such information addresses only the "substantial intrinsic merit" prong of *NYSDOT*'s national interest test. We do not dispute the importance of having skilled radiologists working in our nation's healthcare institutions. At issue in this matter, however, is whether the Petitioner's individual contributions in the field are of such significance that he merits the special benefit of a national interest waiver.

While his character references all stated that the Petitioner's work has impacted other researchers in the field, they did not explain how his specific findings have become part of treatment protocols in the field of interventional radiology. Several letters included statements that the Petitioner's research has "contributed" or has affected the practice of pediatric interventional radiology, but neither the content of the letters or the evidence in the record is sufficient to support a finding that his research has been widely implemented in clinical settings. Statements made without supporting documentary evidence are of limited probative value and are not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Assoc. Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972))

The Petitioner submitted letters of varying probative value. We have addressed the specific claims above. Uncorroborated statements are insufficient to meet the Petitioner's burden of proof. *See Visinscaia v. Beers*, 4 F.Supp.3d 126, 134-35 (D.D.C. 2013) (upholding USCIS' decision to give limited weight to uncorroborated assertions from practitioners in the field); *See also Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988) (holding that an agency "may, in its discretion, use as advisory opinions statements . . . submitted in evidence as expert testimony," but is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought and "is not required to accept or may give less weight" to evidence that is "in any way questionable"). The submission of reference letters supporting the petition is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the petitioner's eligibility. *Id. See also Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact"). As the reference letters did not establish that the Petitioner's work has influenced the field as a whole, they do not demonstrate his eligibility for the national interest waiver.

The Petitioner also makes several statements regarding the impact of his work that are not supported by evidence in the record. For example, the Petitioner claims that "his research has received world-wide medical attention and he has become a recognized name in the field through his professional accomplishments." He also states that "his research has been implemented by clinicians around the country in their clinical practice and it has provided a foundation for other researchers to build upon his findings." However, he has not provided evidence demonstrating that his work has affected diagnostic or treatment protocols for patients at various medical centers, has been frequently cited by other investigators in their medical research, or has otherwise influenced the field as a whole, or that

it has had an impact beyond the patients and staff at his hospitals. Furthermore, there is no evidence showing that the Petitioner's work as an evaluator, teacher, or clinician has influenced the field as a whole. USCIS need not rely on unsubstantiated statements. *See 1756, Inc. v. U.S. Att'y Gen.*, 745 F. Supp. 9, 15 (D.D.C. 1990) (holding that an agency need not credit conclusory assertions in immigration benefits adjudications).

Considering the letters and other evidence in the aggregate, we find that the record does not demonstrate that the Petitioner has had sufficient influence on his field to satisfy the third prong of the *NYSDOT* analysis. As stated above, that prong requires a petitioner to demonstrate that he or she will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. To do this, a petitioner must establish "a past history of demonstrable achievement with some degree of influence on the field as a whole." *See NYSDOT*, 22 I&N Dec. at 219, n. 6. On the basis of the evidence submitted, the Petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

III. CONCLUSION

It is the Petitioner's burden to establish eligibility for the immigration benefit sought. *See* section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, the Petitioner has not met that burden.

ORDER: The appeal is dismissed.

Cite as *Matter of M-Z-* ID 19607 (AAO Oct. 20, 2016)